



C.M.A. (MD)No.269 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.269 of 2021

Perumal

...Appellant/Petitioner

Vs.

1.Mohammed

2.The Oriental Insurance Company Ltd.,
Regional Office,
North Railway Station,
Cochin-628 018.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the award passed in the judgment and decree dated 27.04.2019 made in M.C.O.P.No.28 of 2018 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thoothukudi.

For Appellant : Mr.V.Jeyarani

For R2 : Mr.E.Chandrasekaran

JUDGMENT

The Civil Miscellaneous Appeal has been filed seeking enhancement of compensation fixed by the Motor Accident Claims Tribunal /Chief Judicial Magistrate, Thoothukudi in M.C.O.P.No.28 of 2018 dated 27.04.2019.



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2.For the sake of convenience, the parties herein are referred to as per their rank before the Trial Court.

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)The injured claimant was travelling in a two wheeler bearing Registration No.TN-69-AH-0091 on 01.09.2007 keeping left side of the road. At that time, the lorry bearing Registration No.KA-01-AC-8095 came in a rash and negligent manner and dashed against the two wheeler, as a result, he sustained several injuries and he sustained 100% permanent disability. Therefore, he claimed a sum of Rs.19 lakhs as compensation.

(ii)The second respondent before the Tribunal took a stand that the rider of the two wheeler without any indication had suddenly crossed the road, as a result, the accident had taken place.

4.Before the tribunal, on the side of the claimant P.W.1 was examined and Ex.P1 to Ex.P16 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 was marked.



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5.The tribunal after considering the entire oral and documentary evidence on record, had fixed the negligence on the part of the offending vehicle and considering the nature of disability awarded the compensation as follows:

S.No.	Head	Amount
1.	Partial disability	Rs.1,05,000/-
2.	Loss of income	Rs. 72,000/-
3.	Simple injuries	Rs. 12,000/-
4.	Transportation, Nutritious Food and Attendant charges	Rs. 25,000/-
5.	Pain and sufferings	Rs. 75,000/-
6.	Future prospects	Rs.1,00,000/-
7.	Vehicle damages	Rs. 4,000/-
	Total	Rs.3,93,000/-

Challenging the same, the present Civil Miscellaneous Appeal had been filed by the claimant seeking enhancement of compensation.

6.The learned counsel for the appellant would submit that the appellant is totally immobilised and he sustained 100% functional disability as his total spinal cord was totally damaged and he lost his hearing capacity permanently. But the



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Tribunal without considering all these aspects, had awarded the compensation as stated above. Therefore, the compensation has to be enhanced.

7. On the basis of the above said submission, in an earlier occasion, this Court had referred the appellant to the Medical Board, once again for assessing disability. Pursuant to the same, the Medical Board assessed the disability of the claimant and forwarded the said report to this Court. On perusal of the said report, it could be seen that the appellant sustained 10% of permanent disability in respect of fracture and hip and the said disability had also been surgically stabilized. The report further indicates that there is no permanent hearing disability at present. With regard to the injuries said to have been sustained by the claimant in his forearm, the Medical Board assessed only 15%. The report further reads that the claimant is able to walk and use his both hands freely.

8. The Medical Board had assessed the disability of the claimant only at 10%, whereas the Tribunal had calculated the disability at 35%. Further, the Tribunal had awarded a sum of Rs.3,000/- per each disability. Therefore, this Court is of the view that the contention of the learned counsel for the appellant that the claimant had sustained total permanent disability cannot be countenanced.



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The Tribunal already awarded the compensation for the future medical expenses also. In view of the above, the compensation awarded by the Tribunal is well reasonable and the same does not require any interference. Accordingly, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is hereby confirmed.

13.The Insurance Company is directed to deposit the compensation amount as awarded by the Tribunal with interest and costs from the date of petition till the date of realization to the credit of M.C.O.P.No.28 of 2018, on the file of the Motor Accident Claims Tribunal /Chief Judicial Magistrate, Thoothukudi within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

26.04.2023

NCC : Yes / No
Index : Yes/No
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N.SATHISH KUMAR, J.

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To

- 1.The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Thoothukudi.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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26.04.2023